

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN LEE,

Plaintiff,

v.

CAPITAL ONE BANK (USA), N.A., et al.,

Defendants

No. 08-5656 MMC

**ORDER DIRECTING PLAINTIFF TO
SUPPLEMENT MOTION FOR LEAVE TO
FILE FIRST AMENDED COMPLAINT;
CONTINUING HEARING ON
PLAINTIFF'S MOTION FOR LEAVE TO
FILE FIRST AMENDED COMPLAINT;
CONTINUING CASE MANAGEMENT
CONFERENCE**

On January 7, 2009, at which time the above-titled matter was pending before Magistrate Judge Edward M. Chen, plaintiff filed a Motion for Leave to File Amended Complaint, noticed for hearing February 4, 2009. In the proposed First Amended Complaint ("proposed FAC"), attached as an exhibit to the motion, plaintiff sought to (1) delete the existing statutory claims alleged against defendant Capital One Bank (USA), N.A. ("Capital One") and add a claim for "tortious breach of contract" against Capital One, (2) add additional facts in support of his existing statutory claims against defendant NCO Financial Systems, Inc., and (3) add NCO Portfolio Management as a defendant. Thereafter, on January 9, 2009, the instant action was reassigned to the undersigned, and the February 4, 2009 hearing was vacated in light of the reassignment. (See Reassignment Order.)

1 On January 21, 2009, plaintiff filed a "Notice of Dismissal Without Prejudice," by
2 which plaintiff voluntarily dismissed the instant action without prejudice as to Capital One
3 only. Thereafter, on January 24, 2009, plaintiff filed a "Re-Notice of Motion for Leave to
4 File Amended Complaint," in which plaintiff, in addition to noticing said motion for a March
5 6, 2009 hearing, states the motion is based on his previously-filed "supporting documents,"
6 including the proposed FAC discussed above.

7 In light of plaintiff's having voluntarily dismissed Capital One from the instant action,
8 the proposed FAC would not be properly filed, because it includes a new claim against
9 Capital One, unless plaintiff intends to reinstitute the instant action as against Capital One.

10 Accordingly, the Court hereby directs plaintiff to file, no later than February 13, 2009,
11 either (a) a supplement to his Motion for Leave to File a First Amended Complaint,
12 specifically, a statement indicating he is seeking to reinstitute the instant action against
13 Capital One, or, alternatively, (b) a revised proposed FAC in which plaintiff no longer
14 alleges a new claim against Capital One.

15 The hearing on plaintiff's motion is hereby CONTINUED from March 6, 2009 to
16 March 20, 2009, and the Case Management Conference is hereby CONTINUED from
17 March 27, 2009 to May 8, 2009.

18 **IT IS SO ORDERED.**

19
20 Dated: January 30, 2009


MAXINE M. CHESNEY
United States District Judge